IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 7 OF 2006

Khetshi Hirji Shah,
Santa Cruz(West),
Mumbai. ... Petitioner

versus

The State, Central Bureau
of Investigation, ACB,
Panaji Goa. ... Respondent

Mr. A. N. S. Nadkarni with Mr. H. D. Naik, Advocates for the Petitioner.

Mr. S. R. Rivonkar, Special Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 23RD MARCH, 2006.

P.C.:-

Heard Mr. A. N. S. Nadkarni, the learned Counsel on behalf of the petitioner/A-4 in Special Criminal Case No.11/2002 and Mr. S. R. Rivonkar, the learned Special Public Prosecutor on behalf of the respondent.

2. The learned Special Judge by his Order dated 9-11-2005 has proceeded to frame charge against all the Accused and as against Accused

Nos.1 and 2 for offences punishable under Section 31(2) and Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 420 I.P.C. r/w Section 120 I.P.C. and as against the other Accused namely, A-4 to A-7 under Section 420 I.P.C. r/w Section 120-B I.P.C. All that the learned Special Judge has stated is that he has perused the written arguments filed on behalf of A-4, A-6 and A-7 and that he is satisfied that there is prima facie evidence on record for the purpose of framing the charge against the said Accused. The learned Special Judge referred to the case reported in AIR 2000 SC 665 wherein it was stated that at the stage of framing of charge, the trial Court is not required to marshal materials on record but to prima facie consider whether there is sufficient material against the accused. There can be no dispute about the said proposition for certainly at the stage of framing of charge a Court is not required to marshal the material but certainly the Court is required to find out whether the materials prima facie implicate the accused who is sought to be charged. There is absolutely no reference to any materials which prima facie implicate the petitioner/A-4 and because of that the charge has been framed. There is only ipse dixit that there is prima facie evidence on record for framing of charge without referring to any material on record as far as the petitioner/A-4 is concerned. To that extent, in my view, the Order dated 9-11-2005 framing charge against the petitioner/A-4 only is hereby set aside and the learned Special

Judge is hereby directed to consider prima facie the material available on record implicating the petitioner/A-4 for the purpose of framing of charge/s against him.

3. This petition was filed under Section 482 of the Code of Criminal Procedure, 1973(Code, for short). However, it is well settled now that when there is alternate remedy available by way of revision, a petition under Section 482 of the Code need not be entertained. The petition, therefore, is disposed of after converting the same as Criminal Revision against the said Order dated 9-11-2005.

N. A. BRITTO, J.

RD